



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Fred V. Keridith
County Attorney
Kaufman County
Kaufman, Texas

Dear Sir:

Opinion No. C-7102

Re: Authority of the Commissioners' Court to lease the county farm to a private individual who, in turn, would contract with the old people of the county who wish to live there.

Your letter of recent date requesting an opinion from this department on the above subject matter is as follows:

"Kaufman County owns a 'County Farm' of about 400 acres of land. When defendants are convicted and assessed fines which they cannot pay, or when they are assessed a jail sentence, they are sent to the County Farm to work out fine, costs and jail sentence. The Farm is managed and operated by a Superintendent appointed by the Commissioners' Court, and is worked by convict labor, and the additional necessary labor that is hired direct.

"On this Farm we have, in addition to the Superintendents home, a large two story house which is used as a Paupers' Home, and the Commissioners' Court sends the county paupers out there for their room and board, rather than making donations of money to paupers. The Welfare Board has never paid pensions for Old Age Assistance to the occupants and residents of this Paupers Home. The Welfare Board representative, however, says that if such old people

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lived in a private home where they had to pay board and room, that they could be eligible and receive the Pension.

"The Commissioners' Court requests me to advise whether it would be legitimate for the Court to lease out this large two story residential house to a private individual, who would in turn contract with the old people who reside there because they have no home and no relatives, for a stipulated charge per month for room and board; the idea being that such old people would then become eligible for the Old Age Pension. Our County Farm goes into debt each year and the Court thought this one way of making this particular project on the Farm self-supporting. Will you please advise me if the Court could do this?"

Section 8 of Article XVI of our State Constitution provides:

"Each county in the State may provide, in such manner as may be prescribed by law a Manual Labor Poor House and Farm, for taking care of, managing, employing and supplying the wants of its indigent and poor inhabitants."

Article 2351, Vernon's Annotated Civil Statutes, states in part:

"Each commissioners' court shall:

** * *

"11. Provide for the support of paupers and such idiots and lunatics as cannot be admitted into the lunatic asylum, residents of their county, who are unable to support themselves. By the term resident as used herein, is meant a person who has been a bona fide inhabitant of the county not less than six months and of the State not less than one year."

While it is true that the commissioners' courts are limited in their powers to those conferred upon them by the Constitution and statutes of this State, it is likewise true that such powers do not of absolute necessity have to be expressly given but may exist by necessary implication. 11 Tex. Jur. 564; El Paso County v. Klam, 106 S. W. (2d) 395; Howard v. Wallace, 15 S. W. (2d) 335.

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We held in our Opinion No. 0-2217:

"When the Commissioners' Courts were expressly given the power and duty to 'provide for the support of paupers,' by necessary implication they were clothed with the authority to do all the incidental things necessary to provide for their support."

It was also held in our Opinion No. 0-6125 that:

"The Commissioners' Court of Bexar County has the legal authority to enter into a contract with a group of private individuals, or with a charitable corporation whereby the facilities and grounds of the Bexar County School for Boys can be used by such group of private individuals or corporations to receive and provide for all delinquent and dependent boys committed to such institution by the county and district courts of Bexar County, Texas."

This opinion was based on the following reasoning:

"We understand that such property which you desire to use was acquired and used for the purpose and aims as were conferred on all counties by Article 5138, Vernon's Annotated Civil Statutes, i. e., to establish, equip and maintain detention homes and parental schools as may be necessary to care for the dependent and delinquent children of the county. We know of no reason why such property could not be used by an organization as you propose in order to carry out and accomplish the original purposes intended." (Emphasis ours) See Anderson v. Wood, 152 S. W. (2d) 1084.

Since the Commissioners' Court "has implied authority to exercise a broad discretion to accomplish the purpose intended" under Article XVI, Section 8 of the State Constitution and Article 2351, V. A. C. S., it is our opinion that the Commissioners'

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Court has the authority to lease the home on the county farm to a private individual in order to provide funds to accomplish the purposes under Art. 2351, Subdivision 11, supra.

In connection with the foregoing we wish to call your attention to H. B. No. 127, Acts of the 49th Legislature, R. S., p. 577, (Art. 4442b, V. A. C. S.; Art. 701b, V. A. P. C.) which concerns the regulation and licensing convalescent homes.

It is to be understood that we are not herein passing on the eligibility of the occupants of the Home for Old Age Assistance.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By

J. C. Davis, Jr.
J. C. Davis, Jr.
Assistant

APPROVED FEB 26 1946
[Signature]
FIRST ASSISTANT
ATTORNEY GENERAL

By

John Reeves
John Reeves

JR:LJ

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